BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
RAYMOND S. SANDERS, D.P.M. Certificate No. E-2426	)	No. D-5006 OAH No. N-42093
Respondent.	)	

DECISION

The attached Proposed Decision is hereby adopted by the Board of Podiatric Medicine as its Decision in the above-entitled matter.

This Decision shall become effective on December 18, 1993.

IT IS OR ORDERED November 18, 1993.

By: STEVEN J. DeVALENTINE, D.P.M.
President
Board of Podiatric Medicine

BEFORE THE
BOARD OF PODIATRIC MEDICINE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	No. D-5006
RAYMOND S. SANDERS, D.P.M.	OAH No. N-42093
License No. E-2426	
Respondent.	

PROPOSED DECISION

On June 3 and 4, 1993, in Sacramento, California, M. Amanda Behe, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Fred A. Slimp, Deputy Attorney General, represented the Medical Board of California.

Respondent appeared in propria persona.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

James H. Rathlesberger is the Executive Officer of the Board of Podiatric Medicine, Medical Board of California, (hereinafter "the Board") and made and filed Accusation No. D-5006 in his official capacity.

II

On June 4, 1979, the Board issued License No. E-2426 to Raymond S. Sanders, D.P.M. (hereinafter "respondent"). The certificate was in full force and effect at all times relevant to the Accusation. The license presently has an expiration date of March 31, 1995. Respondent has not been the subject of prior disciplinary action by the Board.

III

Respondent graduated in 1979 from the Ohio College of Podiatric Medicine.

IV

On May 26, 1989, respondent commenced treatment of patient Y.A., who presented with moderately severe pain of the fifth right toe. Respondent's medical records note that the patient had two previous surgeries on the fifth right toe, and three previous surgeries on the fifth left toe. Respondent's medical records include the following notation:

> "...Clinical findings: slight erythema, swelling and corn over the 5th right toe. Pain on palpation. Contraindicating factors: none. X-ray findings: hammertoe 5th right toe and iatrogenic exostosis of the same toe. Plan: Arthroplasty of the 5th right toe."

The X-ray respondent took on May 26, 1989 (Exhibit 8-A), displayed evidence of previous surgery on patient Y.A.'s fifth right toe, a loose bone fragment in the proximal interphalangeal joint, and exostoses or ligament attachments. Respondent's theory that the bone fragment was an accessory sesamoid is not persuasive because of its placement and configuration.

Persuasive expert testimony established that the appropriate surgical procedure would have been removal of the distal end of the proximal phalanx, removal of the loose bone fragment, and exostosectomy of the middle and distal phalanges.

Persuasive expert testimony established that respondent should have removed the bone fragment. Failure to do so would be expected to result in post-operative pain and not resolve patient Y.A.'s presenting complaints. The fragment would have been easily accessible in the operative procedure irrespective of its soft tissue attachments; it was in the joint space upon which respondent operated.

V

On June 1, 1989, respondent operated on patient Y.A.'s fifth right toe. For that procedure respondent completed an Operative Report which noted a "Pre-Operative Diagnosis" of "Hammertoe 5th right toe" and "Post-Operative Diagnosis" of "Same as above". The Operative Report identified the "Name of Procedure Performed" as "Arthroplasty 5th right toe". The "Description of the Procedure Performed" written by respondent stated the following:

> "Patient was placed in the supine position. The surgical sites were prepped and draped in the usual sterile manner.
>
> "A longitudinal semi-elliptical skin incision of 5 mm wide at its center was performed over the right 5th toe. The incision was deepened through the deep fascia. The skin and underlying deep fascia were reflected medially and laterally. Using a #64 Beaver blade, a tenotomy and capsulotomy of the interphalangeal joint was achieved. The extensor digitorum longus tendon was reflected proximally. After delivering the head of the proximal phalanx, a Zimmer oscillating saw was used to to [sic] perform a [sic] arthroplasty; and a Zimmer micro drill to reshape the end of the distal shaft. A tenectomy of 5 mm long was performed. Using a simple mattress suture of 4-0 Dexon-S, a tenorrhaphy was performed.
>
> "The skin margins were well coaptated and closed with a simple subcuticular suture of 4-0 Prolene. During the entire procedure, the surgical sites were kept hydrated with copious amounts refrigerated 1/4 strength Dakin's. Each surgical site was injected with 0.25 cc dexamethasone phosphate and covered with Betadine ointment, Adaptic, sterile gauze, and Coban. Post-operative shoes were dispensed to the patient. Post-operative instructions, both orally and in writing were dispensed to the patient.
>
> "The surgery was uneventful with normal capillary filling time remaining in the toes. NOTE: No tourniquet was employed. The patient tolerated the procedure well and left the operating room unaided and in good spirits. R/A one week"

Respondent signed the Operative Report.

VI

As quoted above, the Operative Report identified the "Name of Procedure Performed" as "Arthroplasty 5th right toe". In the context of respondent's diagnosis, that surgical procedure required that respondent remove, or markedly modify the shape of, the distal end of the proximal phalanx of the fifth right toe. That such a procedure was actually performed would have been evident from a comparison of the pre-operative and post-operative X-rays.

The post-operative X-ray respondent took on June 1, 1989 (Exhibit 8-B), displayed only that exostoses or ligament attachments of the middle and distal phalanges were removed. The post-operative X-rays indicate that respondent did not remove any significant portion of the bony structures required to be removed in an arthroplasty. No significant modification of the distal end of the proximal phalanx or joint was achieved by respondent in his surgery. Respondent did not remove the loose bone fragment in the joint of patient Y.A.'s fifth right toe. The post-operative X-ray established that respondent did not perform an arthroplasty; rather, he performed an exostosectomy. His failure to perform the procedure reflected on his Operative Report reflects a lack of knowledge and a departure from the standard of practice of podiatric medicine.

Respondent testified that the amount of bone he removed from the distal end of the proximal phalanx was "because of the surgery before" on the fifth right toe. He testified that there "was no insurance number" for his surgical repair of her hammertoe. He stated "you can call it an arthroplasty - to me that meant whatever you want to call it, to relieve her pain." Respondent testified that he "remodelled the joint", and "to me a joint is a joint capsule surrounding the joint ... and some bone work." He opined that he sees "a significant difference pre- and post-operatively especially because that's where it was painful". His testimony is not persuasive; the correct identification of a surgery depends upon the procedure performed rather than where the patient experiences pain.

Respondent admitted that before the first surgery he "was aware that there seemed to be a separate piece of bone on the latter aspect of the toe." He acknowledged, but did not explain, that he did not indicate the presence of that structure in his medical reports for patient Y.A. Respondent testified that he did not remove the bone fragment in the proximal interphalangeal joint in the first surgery "because it was in the capsule" and "you had to look for it and it was not what was hurting her". His testimony is not persuasive. If he in fact had performed the surgical procedure represented in his records the joint capsule was open, and the fragment could have been easily found and removed.

VII

Post-operatively patient Y.A. complained of persistent pain and infection in her fifth right toe. Respondent prescribed analgesics and antibiotics.

Respondent took an X-ray (Exhibit 8-C) of patient Y.A.'s fifth right toe on July 13, 1989, approximately six weeks after the first surgery he performed. The bone fragment in the proximal interphalangeal joint could still be seen in that X-ray. No change in the shape of the proximal phalanx was displayed. A slightly decreased distance between the middle and distal phalanx was displayed on the X-ray, apparently as the result of scar contracture which could be expected six weeks after surgery.

VIII

On July 27, 1989, respondent performed a second operative procedure on patient Y.A.'s fifth right toe. It is unusual that a second surgery on a hammertoe would be needed; that occurs in only approximately five percent of cases. A pre-operative X-ray (Exhibit 8-D) taken that day displayed the bone fragment in the proximal interphalangeal joint.

Respondent failed to enter the second surgical procedure on the progress notes, operative notes, or in any other medical records for patient Y.A. The only document in patient Y.A.'s file which reflected the second surgery was a surgical consent form signed by patient Y.A. on July 27, 1989, at 5 p.m. The standard of podiatric practice required that respondent complete an operative note or entry in the treatment records identifying at least the following:

a. patient name

b. pre-operative diagnosis

c. date and name of the surgery performed

d. name of surgeon and assistants (if any)

e. narrative description of the surgical procedure, including the manner in which the procedure was performed, and how the patient tolerated the surgery

f. post-operative diagnosis

Respondent was aware of the requirement for an operative report and had, approximately seven weeks earlier, completed the operative report quoted above for the first surgery.

The standard of podiatric practice required that respondent also make an entry noting that the surgery was performed in the patient's chronological treatment record, also known as progress notes. Respondent was aware of that requirement and had, approximately seven weeks earlier, made the following entry regarding the first surgery in the progress notes for patient Y.A.:

> "06/01/89 Arthroplasty performed on the 5th right toe. Surgery was uneventful. Patient tolerated the procedure well and left the office unaided in a post-op shoe and in good spirits. R/A 6 days."

The standard of podiatric practice required that respondent maintain sufficiently complete medical records for patient Y.A. to effectively treat his patient. A physician cannot reasonably rely on his memory for such matters. Moreover, other physicians may require the information contained in the patient's medical records for later treatment of that patient. Here, patient Y.A. later consulted another podiatrist for treatment.

Respondent testified that he did perform the second surgery, and that he "does an operative report and progress note" "as a matter of course". In 1989 respondent would either hand-write, or dictate for transcription, or type himself his Operative Reports. He acknowledged that he "could not find" the subject Operative Report for patient Y.A., but asserted that "it's more obvious to me that I did it and it was not placed in the chart". His testimony does not account for the absence of a corresponding notation in the patient's progress notes.

IX

The only information in the patient's chart regarding the type of procedure to be performed in the second surgery was the consent form signed by patient Y.A., which identified that respondent would perform an "exostosectomy 5th right" [sic]. That surgical procedure required that respondent remove a bone spur or spurs from the fifth right toe. The post-operative X-ray (Exhibit 8-E) indicated that respondent removed the exostoses on the lateral side of the distal phalanges in his second surgery on patient Y.A. The post-operative X-rays indicated that respondent did not remove bony fragments in the joint of the fifth right toe and still did not perform the arthroplasty which was noted in the operative note of the first surgery. The post-operative X-ray displayed a large bulky bandage around the fifth right toe and a change in alignment, apparently as a result of the bandage.

Respondent testified that on the date of the second surgery he "decided to do an exostosectomy, a stab incision down to the bone and with a burr smooth off the bump". He stated "All of her pain was not in the area of the piece of bone - it was more distal. I removed where the pain was." Respondent testified that

he saw the bone fragment in the proximal interphalangeal joint but did not remove it "because at the time she did not complain about it and because I would have had to open up the toe again". A patient could not reasonably be expected to know that such a bone fragment existed, much less identify that the fragment caused her pain.

X

On a date not established by the record respondent was referred by her physician, I. Cardeno, M.D., to Brian McDowell, D.P.M., for treatment of the continuing pain in the fifth right toe. Dr. McDowell took the patient's medical history, podiatric history, X-rays, and performed an examination. Dr. McDowell's report noted that the patient "has had many too many surgeries on this 5th digit and still has the original problem. I really don't think she has ever had the correct procedure performed; consequently she still has a severe painful clavus formation."

Patient Y.A. completed a release form to permit Dr. McDowell to obtain her treatment records from respondent. Dr. McDowell provided that document to respondent, in whose patient records the form was found in September 1991. Respondent failed to provide patient Y.A.'s medical records to Dr. McDowell when requested to do so.

Dr. McDowell operated on patient Y.A. on March 19, 1990. Dr. McDowell removed the head of the proximal phalanx, cut off the base of the medial phalanx at an angle, and removed the bone fragment from the proximal interphalangeal joint. Patient Y.A. experienced some pain in April and May 1990, but healed without incident and at her post-operative visit on August 27, 1990, was asymptomatic. Dr. McDowell completed an Operative Report on the date of surgery, and made entries in patient Y.A.'s progress notes regarding that surgery.

The surgery performed by Dr. McDowell was that which should have been completed by respondent, i.e. an arthroplasty.

XI

On a date not established by the record patient Y.A. filed a complaint with the Board alleging that her foot was not healing after several office visits and surgeries, and that respondent would not treat her until her bill was paid. The Board presented no evidence regarding the latter allegation.

The complaint was investigated by Senior Investigator Martin A. Machado, who interviewed respondent on September 21, 1991. Respondent admitted to Investigator Machado that he had performed two surgeries on patient Y.A., and only the first of those surgeries was documented in his medical records. Respondent

also represented that he had not billed the patient for the second surgery.

XII

Respondent testified that patient Y.A. "did not keep appointments", "was not as responsible as I think a patient should be", did not pay his bill after her insurance carrier denied coverage, and probably did not follow his recommendations regarding remaining off her feet during recovery. Those matters are irrelevant to respondent's failure to enter the second surgery on patient Y.A.'s medical records, his failure to remove the bone fragment, and his failure to remove the bony structures required for an arthroplasty.

Respondent testified that he has been the subject of malpractice claims and did not prevail in those proceedings.

XIII

The Board expended a total of $6,344.34 in the investigation and prosecution of the subject action through May 26, 1992.

DETERMINATION OF ISSUES

I

Pursuant to Business and Professions Code section 2497 and 2234(c) the Board may take action against any licensee for unprofessional conduct on the grounds of repeated negligent acts. Pursuant to Business and Professions Code section 2497 and 2234(d) the Board may take action against any licensee for unprofessional conduct on the grounds of incompetence.

II

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent's license pursuant to Business and Professions Code sections 2497 and 2234(c) for his repeated failure to remove the existing bone fragment in the joint space of patient Y.A.'s fifth right toe.

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent's license pursuant to Business and Professions Code sections 2497 and 2234(d) for his repeated failure to remove the bony structures required for the arthroplasty and for his failure to remove the existing bone fragment in the joint.

Respondent's failure to properly memorialize the second surgery on the medical records can not be characterized as a repeated negligent act because it occurred only once.

ORDER

License No. E-2426 issued to respondent Raymond S. Sanders, D.P.M., is revoked; however, the revocation is stayed and respondent is placed on probation for five years on the following terms and conditions:

1. Respondent shall obey all federal, state and local laws, and all rules governing the practice of podiatric medicine in California.

2. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board of Podiatric Medicine, stating whether there has been compliance with all the conditions of probation. Notwithstanding any provision for tolling of requirements of probation, during the cessation of practice respondent shall continue to submit quarterly declaration under penalty of perjury.

3. Respondent shall comply with the Board of Podiatric Medicine's probation surveillance program.

4. Respondent shall appear in person for interviews with the Board of Podiatric Medicine's medical consultant upon request at various intervals and with reasonable notice.

5. In the event the respondent fails to satisfactorily complete any provision of the order of probation, which results in the cessation of practice, all other provisions of probation other than the submission of quarterly reports shall be held in abeyance until respondent is permitted to resume the practice of podiatry. All provisions of probation shall recommence on the effective date of resumption of practice. Periods of cessation of practice will not apply to the reduction of the probationary period.

6. In the event respondent should leave California to reside or practice outside the state, respondent must notify the Board of Podiatric Medicine in

writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

7. Upon successful completion of probation, respondent's certificate will be fully restored.

8. If respondent violates probation in any respect, the Board of Podiatric Medicine, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board of Podiatric Medicine shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final and no petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation pending against respondent.

9. Respondent shall submit satisfactory proof biennially to the Board of Podiatric Medicine of compliance with the requirement to complete fifty hours of approved continuing medical education for re-licensure during each two (2) year renewal period.

10. Respondent is ordered to pay to the Board of Podiatric Medicine the amount of $6,344.34 on or before two years from the effective date of this Decision for recovery of the actual and reasonable costs of the investigation and prosecution of this matter as provided for in Business and Professions Code section 2497.5.

11. Respondent shall take and pass an oral clinical examination to be administered by the Board of Podiatric Medicine or its designee on the next date of administration subsequent to the effective date of this Decision. If respondent fails that examination, respondent shall take and pass the next oral clinical examination to be administered by the Board of Podiatric Medicine or its designee. If respondent fails that examination, respondent shall take and pass the next oral clinical examination to be administered by the Board of Podiatric Medicine or its designee. Refusal or failure to take any required examination shall be deemed a failure of the examination and a violation of probation. After three failures, respondent

must wait one year to take each necessary re-examination thereafter, and each examination shall be one of the Board of Podiatric Medicine's regularly scheduled examination dates. Respondent shall pay the cost of each examination taken.

If respondent fails to take and pass the examination within the first two regularly scheduled examination dates, the respondent shall cease the practice of podiatric medicine until respondent takes and passes the oral clinical examination and is so notified by the Board of Podiatric Medicine in writing. Failure to pass the required examination no later than 100 days prior to the first scheduled termination of probation shall constitute a violation of probation.

12. Within ninety (90) days of the effective date of this Decision respondent shall submit to the Board of Podiatric Medicine or its designee, for its prior approval, an intensive clinical training program in the subject areas of podiatric surgery and record-keeping. The exact number of hours and the specific content of the program shall be determined by the Board of Podiatric Medicine or its designee. Respondent shall successfully complete the training program no later than two years from the effective date of this Decision, and may be required to pass an examination by the Board of Podiatric Medicine or its designee related to the program's contents.

Dated: July 14, 1993

M. AMANDA BEHE
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE
BOARD OF PODIATRIC MEDICINE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: RAYMOND S. SANDERS, D.P.M. 7948 Auburn Boulevard Citrus Heights, CA 95610 License No. E-2426 Respondent.	No. D-5006 ACCUSATION

Complainant, James H. Rathlesberger, alleges as follows:

1. He is the Executive Officer of the Board of Podiatric Medicine of the State of California (hereinafter "Board"), and makes and files this accusation solely in his official capacity.

2. On or about June 4, 1979, Raymond S. Sanders, D.P.M. (hereinafter "respondent") was issued license number E-2426 to practice podiatric medicine. At all times pertinent

hereto said license was, and currently is, in full force and effect and will expire, unless otherwise renewed, on March 31, 1993.

3. Section 2497 of the Business and Professions Code (hereinafter "Code") authorizes the Board to take disciplinary action against the holder of a license to practice podiatric medicine.

4. Section 2234(c) of the Code provides for disciplinary action against a licensee for unprofessional conduct on the grounds of repeated negligent acts.

5. Section 2234(d) of the Code provides for disciplinary action against a licensee for unprofessional conduct on the grounds of incompetence.

6. Respondent is subject to disciplinary action pursuant to Code sections 2234(c) and 2234(d) in that he is guilty of unprofessional conduct as follows:

Yoko A.[1/]

On or about May 26, 1989, respondent commenced treatment of Yoko A. for a hammer toe condition of the fifth toe of her right foot. On or about June 1, 1989 respondent performed an arthroplasty on Yoko A.'s fifth right toe. Thereafter Yoko A. complained of persistent pain and infection in her fifth right toe which respondent treated with analgesics and antibiotics. On or about July 27, 1989, respondent performed an exostosectomy on Yoko A.'s fifth right toe. Respondent did not enter the

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1. The full names of patients referred to herein will be made available to respondent upon request for discovery.

exostosectomy performed on July 27, 1989, in the progress notes, operative notes, or in any other medical records of Yoko A. X-rays taken post-operatively following both procedures performed by respondent on Yoko A. indicate that respondent did not remove the bony structures required to be removed in an arthroplasty and exostosectomy of the types attempted on Yoko A., and did not remove bony fragments remaining from prior surgeries on Yoko A.'s fifth right toe that contributed to her condition.

7. Respondent's failure to enter the exostosectomy performed on Yoko A. on July 27, 1989, in any of Yoko A.'s medical records and his failure to remove either the bony structures required for successful completion of an arthroplasty and exostosectomy of Yoko A.'s right fifth toe or previously existing bone fragments in her right fifth toe constitute repeated negligent acts within the meaning of Code section 2234(c).

8. Respondent's failure to remove either the bony structures required for successful completion of an arthroplasty and exostosectomy of Yoko A.'s right fifth toe or the previously existing bone fragments in her right fifth toe constitute incompetence within the meaning of Code section 2234(d).

WHEREFORE COMPLAINANT PRAYS that the Board of Podiatric Medicine hold a hearing on the matters alleged herein and, following said hearing, issue a decision:

1. Revoking or suspending license E-2426 for the practice of podiatric medicine previously issued to Raymond S. Sanders, D.P.M.; and

2. Taking such other and further action as it may deem proper.

DATED: October 29, 1992

JAMES H. RATHLESBERGER
Executive Officer
Board of Podiatric Medicine
State of California

Complainant